

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 360 be amended to read as follows:

- 1 Page 4, before line 1, begin a new paragraph and insert:
- 2 "SECTION 6. IC 5-16-5.5-3 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. Any state agency
- 4 which enters into a contract for any public building, work or
- 5 improvement, and any contractor subcontracting portions of such
- 6 contract, which contracts contain provision for retainage shall include
- 7 in their respective contracts a provision that at the time any retainage
- 8 is withheld, the state agency and/or contractor shall place such
- 9 retainage in an escrow account, with a bank, savings and loan
- 10 institution, or the State of Indiana or an instrumentality thereof, as
- 11 escrow agent selected by mutual agreement between the affected
- 12 contract parties, pursuant to a written agreement among the bank or
- 13 savings and loan institution, the state agency, and the contractor as
- 14 appropriate. The escrow agreement shall provide as follows:
- 15 (a) The escrow agent shall promptly invest all escrowed principal
- 16 in such obligations as shall be selected by the escrow agent in its
- 17 discretion.
- 18 (b) The escrow agent shall hold the escrowed principal and
- 19 income until receipt of notice from the state agency and the
- 20 contractor, or the contractor and the subcontractor, specifying the
- 21 portion or portions of the escrowed principal to be released from the
- 22 escrow and the person or persons to whom such portion or portions
- 23 are to be released. Upon receipt of such notice the escrow agent shall
- 24 promptly remit the designated portion of escrowed principal and the
- 25 same proportion of then escrowed income to such person or persons.
- 26 (c) The escrow agent shall be compensated for its services as the
- 27 parties may agree on a commercially reasonable fee commensurate
- 28 with fees then being charged for the handling of escrow accounts of
- 29 like size and duration. The fee must be paid from the escrowed
- 30 income of the escrow account.
- 31 (d) The agreement may include such other terms and conditions
- 32 not inconsistent with the foregoing paragraphs (a), (b) and (c)

1 including but not limited to provisions authorizing the escrow agent
2 to commingle the escrowed funds with funds held pursuant to other
3 escrow agreements and limiting the liability of the escrow agent.
4 **(e) This section does not apply to commuter transportation**
5 **districts established under IC 8-5-15."**
6 Renumber all SECTIONS consecutively.
(Reference is to SB 360 as printed January 27, 2006.)

Senator LANDSKE